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No. 85-1396

IN THE

Supreme Court of the United States

October Term, 1985

William B. Royster,

Petitioner,

v.

Board of Trustees of Anderson County School District No. 5, Tony Turner, Edward W. Morgan, W. Frank Kellam, and A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District No. 5 and as individuals,

Respondents.

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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April 9, 1986

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STATEMENT OF THE CASE

Respondents terminated Petitioner Royster's job as school superintendent in violation of his employment contract. The district court and the jury concluded that Royster was entitled to substantial damages as a result of the wrongful deprivation of his property interest in continued employment. The court of appeals reversed. It asserted that Royster had not been denied any property right because he had received the remainder of the salary due him under contract. By ignoring the full property interest to which Royster was entitled under his contract, the court of appeals attempted to eliminate the

substantive basis for Royster's damage award and thereby to leave Royster uncompensated for injuries he had suffered as a result of his wrongful termination.

I. RESPONDENTS' BRIEF IGNORES STATE LAW

Respondents contend repeatedly that Royster had only a "unilateral expectation" of remaining as the school superintendent. Under *Board of Regents v. Roth*, 408 U.S. 564 (1972), state law determines whether Royster had a property right. Under state law, *Tracey v. Sconnix Broadcasting of South Carolina, Inc.*, 284 S.C. 379, 325 S.E.2d 542 (1985), Royster's fixed term contract gave him a legal right to his job title and to the duties for which he had contracted.[1] *Tracey* does not require that the employment contract contain a discharge-only-for-cause provision. That Royster's contract did contain such a protection makes his case even stronger.[2]

Respondents argue that the state should be free to breach a contract giving an employee a right to a certain job and to certain duties without fully compensating the employee for his damages. If the state wishes to be able to relieve employees with pay, it should not enter contracts in which it agrees to do otherwise.

II. RESPONDENTS' RELIANCE UPON *CLEVELAND BOARD OF EDUCATION v. LOUDERMILL* IS MISPLACED

In *Cleveland Board of Education v. Loudermill*, ___ U.S. ___, 105 S.Ct. 1487, 1495 (1985), it was suggested that where an employer perceives "a significant hazard in keeping the employee on the job, it can avoid the problem [of due process

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[1]In arguing that *Tracey* should limit Royster's right of recovery to breach of contract damages, Respondents continue to miss the distinction between the underlying substantive interest and damages limitations under state contract remedies. *See Carey v. Piphus*, 435 U.S. 247, 258 (1978).

[2]Despite Respondents' assertion to the contrary, the record is clear that Respondents moved against Royster for cause-type reasons (see testimony of Board members, pages App. 1, 2 of Appendix hereto), but without compliance with the discharge-for-cause provision of the contract.

violation] by suspending with pay." Respondents seek support in that statement. Nevertheless, the Respondents repeatedly insist that there was no "cause" for Royster's discharge. Absent a cause for his discharge, there could not have been any significant hazard involved in keeping him on the job as his contract required.[3] Nothing in *Loudermill* suggests that the state is entitled to remov) an employee from his job in violation of his contract absent a significant hazard.

III. RESPONDENTS' CONTENTION THAT ROYSTER SOMEHOW WAIVED OR FAILED TO PURSUE HIS RIGHT TO RECOVER IS CLEARLY WITHOUT MERIT

Respondents appear to argue that Royster is not entitled to recover because he failed to properly invoke his right to procedural due process. Respondents contend that, after being relieved, Royster never asked for the reasons for the action against him and never requested a hearing to challenge those reasons. However, both under his contract and the requirements of due process, Royster was entitled to notice and an opportunity for a hearing *before* he was deprived of his property right. See contractual provisions, Petition for Writ of Certiorari, page B-7; *Loudermill*, 105 S.Ct. at 1493.

In attempting to bring the present case within the circumstances of *Cannon v. Beckville Independent School District*, 709 F.2d 9 (5th Cir. 1983), regarding the failure to invoke due process rights, Respondents refer to a January 14, 1983 letter to Respondents written by counsel for Royster which attempted to resolve the matters of unused vacation and sick pay. (Brief in Opposition, page 12, referring to Joint Appendix to Fourth Circuit at 422.) Respondents conveniently overlook the fact that the July 14, 1983 letter was written *after* the filing of the instant action alleging a taking of property without procedural due process. (See complaint, Joint Appendix to Fourth Circuit at 8.)

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[3]Although the record makes clear that Respondents proceeded against Royster for cause-type reasons, the record is devoid of evidence indicating a possible emergency situation requiring Royster's immediate removal.

IV. RESPONDENTS' ARGUMENT THAT ROYSTER WAS NOT INJURED IS PRECLUDED BY THE JURY'S DAMAGE VERDICT

Respondents appear to argue that their action was not injurious to Royster. They contend that Royster was not discharged for cause and that there was no public disclosure of the reasons for the action. Respondents can hardly deny, however, that their official public statement regarding the action read: "...the board has been advised by its attorney to make no comment regarding Dr. Royster's release due to the sensitive nature of this matter and the possibility of litigation." (See Petition for Writ of Certiorari, page B-23.) At trial, Royster contended that this official statement severely damaged his reputation. He received a damage verdict from the jury.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Petition, the Court should grant certiorari, and reverse the judgments below.

Respectfully submitted,

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April 8, 1986

APPENDIX

district which were concerns, so it had no way of us evaluating how these concerns were being met and dealt with and accomplished. It didn't identify any way of reaching goals.

Q. You voted to relieve Dr. Royster. Why did you see the need to relieve him if his contract was going to run out on June the 30th of that year?

A. The schools were falling in. We've got schools 20 years old that have never had a coat of paint on them. There was favoritism shown between staff members and the regular classroom teachers. We had no good maintenance program, so we couldn't have had a preventive maintenance program whatsoever. My wife taught in the school district 13 years prior to my running for the school board, so it's not the January 5th that I woke up and made a decision. My decision was made over 13 years of living with a school teacher. She was not satisfied in the least, and when we got financially able she decided to voluntarily resign her position. About 80 percent of our friends and acquaintanances, I would say 80 percent, most of them, of friends and acquaintances were also teachers in the school district and we had a lot of contact with them. They felt that there was a lot of intimidation between the central office and the schools. People did not feel comfortable about approaching Dr. Royster about anything. They were scared to death of him.

Byrholdt. In October, of course, being the author of the motion that we would reconsider with the new board the superintendent's contract, I began between October and January doing my own personal type of evaluation, and I found several things that were of great concern to me, not only great concern but of importance enough to terminate Dr. Royster and relieve him of his duties immediately when the question was put in January. Yesterday Dr. Royster testified that it's the duty of a Board of Trustee member to make sure that the children are provided with a quality education. I, by no means, thought we were doing that. I based that decision partly on the fact that in previous conversation with now board chairman or chairwoman, should I say, Ann Huitt. Mrs. Huitt shared with me that one afternoon or one morning, one day, she witnessed a young man that could not sign his payroll check. He had to take out his driver's license, copy his name down off of his driver's license to endorse the check at the bank. Mrs. Huitt went over and talked with that young man. She asked him what high school did he go to or rather what school he graduated from. He was still in the 11th grade. And I thought to myself, if we are indeed providing the quality education that school board members are enforced to give, we certainly weren't doing that. I then asked myself the question, well, if an 11th grader can't read or write, it's